INTHE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

C.W.P. No. 7163 of 1992
Date of decision November 21, 2007

1. Didar Singh, Assistant Food and Supplies Officer, Food and Supplies Department, Goraya, District Jalandhar.

..... Petitioner

Versus

1. The State of Punjab through the Secretary to Government, Punjab, Department of Food and Supplies, Chandigarh.

2. The Director, Food and Supplies, Punjab. Sector 17, Chandigarh

..... Respondents

CORAM: HON'BLE MR. JUSTICE SHAM SUNDER

Present: Mr. G. S. Bal, Advocate
for the petitioner.

Mr. Jaspreet Singh, Assistant Advocate General, Punjab for the respondents.

****

Sham Sunder, J.

Through the instant writ petition of certiorari, the petitioner has sought quashing of the impugned order dated 19.12.1990 (Annexure P-5) passed by respondent No.2 whereby he was reduced to the basic pay of the Assistant Food and Supplies Officer, on permanent basis, and the impugned order dated 12.2.1992 (Annexure P-8) passed by respondent No.1, whereby his appeal was partly accepted, and he was reduced to the basic pay of his pay scale for four years. Prayer for directing the respondents to grant all consequential benefits to the petitioner, pursuant to the quashing of the aforesaid orders, with interest, was also made.

2. The petitioner was working as Assistant Food and Supplies Officer, in Food and Supplies Department, Punjab, and was posted at Goraya Distt. Jalandhar. During the year 1985-86, when the petitioner was posted at Tarn Taran, Distt. Amritsar, a regular departmental enquiry

was instituted against him, on the charges, mentioned in the chargesheet dated 12.2.1987, (Annexure P-1). The petitioner submitted a detailed reply vide his letter dated 23.5.1987 (Annexure P-2). The only document which was relied upon in the charge-sheet, was preliminary report dated 16.4.1986. The petitioner made a specific request, for the supply of a copy of the preliminary enquiry report, but the same was not supplied to him. Thereafter, a regular departmental enquiry, was ordered to be held, against the petitioner. The enquiry officer was appointed to hold enquiry. The enquiry Officer submitted report dated 3.8.1988, holding the petitioner, guilty of two charges and exonerated him, in respect of the remaining two charges, levelled in the charge sheet. Even, the enquiry officer, in his report, relied upon the preliminary enquiry report, copy whereof was not supplied to the petitioner. On the basis of enquiry report dated 3.8.1988, respondent No.2, passed an order dated 19.12.1990 disagreeing with the report of the enquiry officer, to the extent he exonerated the petitioner, in respect of charges No. 1 and 4, levelled in the charge sheet and held that all the charges stood established, against the petitioner. He, thus, passed the order of penalty, referred to in para 1. Copy of the enquiry report, along with the disagreement note, was not supplied to the petitioner. However, copy of the enquiry report, was supplied later on, when the petitioner had already filed an appeal, before the Appellate Auhority. The Appellate Authority, vide order dated 12.2.1992, partly accepted the appeal and passed the order of penalty referred to in para 1. It was further stated that the orders of penalty were illegal and violative of the principles of natural justice, as copies of the preliminary as also of the final enquiry reports along with the disagreement note, were not supplied to the petitioner,and,

as such, he was deprived of the opportunity of being heard and effectively presenting his case, before the enquiry officer, and the disciplinary authority, in a proper manner; that the language of the charge-sheet clearly showed that the disciplinary authority pre-judged the guilt of the petitioner by using the words, at various places, therein that the charges against the petitioner stood proved; that the disciplinary authority did not arrive at an independent conclusion, and had acted with a closed mind. Accordingly, the prayer referred to in para 1 was made.

3. In the written statement, filed by the respondents, the posting of the petitioner, as Assistant Food and Supplies Officer, at Tarn Taran in 1985, was admitted. It was denied that the charge-sheet was framed with pre-judged mind . It was, however, admitted that copy of the preliminary report was not supplied to the petitioner, but he was allowed to inspect the records, on the basis of the application dated 6.5.1987, made by him. It was further stated that he inspected the records. It was admitted that copy of the final enquiry report, was not supplied to the petitioner, before passing the order of penalty, by the disciplinary authority, but it was supplied before he filed the statutory appeal. It was further stated that full opportunity of being heard, and effectively representing his case, was afforded to the petitioner, by the enquiry officer, the disciplinary authority, and the Appellate Authority. It was denied that the orders were passed by the disciplinary authority and the Appellate Authority, in violation of the principles of natural justice, and, as such, were illegal. The remaining averments, were denied, being wrong.

4. I have heard the learned Counsel for the parties, and have gone through the record of the case, carefully.

5. The learned Counsel for the petitioner, vehemently contended that the language of the charge-sheet, clearly showed that, at many places, the competent authority, recorded that the charges against the petitioner stood proved. He further submitted that, on account of pre-judging of the guilt of the petitioner, he was prejudiced, in his defence. He further contended that that on account of this reason, the enquiry report and the orders of penalty stood vitiated. He also placed reliance on **Hans Raj Gupta Versus State of Punjab** 1992 (1) Service Cases Today 258 and **Khem Chand Versus Union of India AIR 1958 SC 300** in support of his contention.

6. In Khem Chand's case (supra) the Apex Court observed as under:-

> *"This procedure also has the merit of giving some assurance to the officer concerned that the competent authority maintains an open mind with regard to him. If the competent authority were to determine, before the charges were proved, that a particular punishment would be meted out to the government servant concerned, the latter may well feel that the competent authority had formed an opinion against him, generally on the subject matter of the charge or, at any rate, as regards the punishment itself. Considered from this aspect also the construction adopted by us appears to be consonant with the fundamental principle of jurisprudence that justice must not only be done but must also be seen to have been done."*

7. Now let us see, as to whether, in the instant case, the competent authority pre-judged the guilt of the petitioner, in the charge-sheet (Annexure P-1) itself or not. In para 3 of the charge-sheet

Annexure P-1, the language used was that while Didar Singh-petitioner was posted as Assistant Food and Supplies Officer at Tarn Taran, head quarter, he never inspected the paddy stocks, on the spot, stored with the rice shellers, and also inspection was not got carried out, through his subordinate staff, and this gave a proof of his lax supervision. In para 4 of the details of charges at page 23 of the paper book, it was recorded by the competent authority that the petitioner did not bring to the notice of the higher officers the affidavit dated 22.2.1986, sworn by the party, and kept the said affidavit with him to save himself and therefore, this proved his connivance with the party. In para 5 of the charge-sheet, it was recorded by the competent authority, that the petitioner did not stop the payment of M/s Dharamvir Rice Mills for not supplying the rice, but kept making payments which indicated that he had done this, in connivance with the party intentionally. In the details of charges against Didar Singh, petitioner, at page 24 of the paper book in para 5, it was recorded by the competent authority, that the petitioner while knowing that the parties had not been supplying rice against the government paddy, issued to them, had been releasing the payment to them, which proved his irresponsibility, that he did not bother about the government letters.

8. The observations made in **Khem Chand's case (supra),** extracted hereinbefore, show that justice should not only be done, but must be seen to have been done. Since, in the instant case, the guilt of the petitioner was pre-judged, by the competent authority, while framing the charge-sheet, and using the language, therein, at many places, that the charges were either proved, or that he was guilty of lax supervision, or that it was proved that he acted irresponsibly, the enquiry proceedings were

vitiated and the orders passed by the disciplinary and the Appellate Authority are liable to be set aside. The principle of law, laid down in **Hans Raj's** and **Khem Chand's cases (supra)** is fully applicable to the facts of the present case. The contention of the Counsel for the petitioner, carries substance, and stands accepted.

9. The learned Counsel for the respondents, however, contended, that only prima facie view of the disciplinary authority, had been disclosed, in the charge-sheet, and, therefore, it could not be said that the said authority had pre-judged the guilt of the petitioner. The contention of learned Counsel for the respondent, in this regard, does not appear to be correct. The use of language in the charge-sheet, and the details of the charges, referred to hereinbefore, clearly revealed that the competent authority had already pre-judged the guilt. In these circumstances, the Enquiry Officer was left with no option, but to hold the petitioner guilty, in respect of some of the charges. Had it been recorded, in the charge-sheet that according to the disciplinary authority, the petitioner was prima facie found to have committed certain irregularities, or he was prima facie guilty of some charges, the matter would have been different. The word 'prima facie' was not used, in the charge-sheet, or details of charges. This contention of the learned counsel for the respondents, being without merit, must fail, and the same is rejected.

10. It was next contended by the learned counsel for the petitioner, that copy of the preliminary Enquiry report, relied upon by the disciplinary authority, in the charge-sheet, as also by the Enquiry Officer in his report, was not supplied to the petitioner despite request having been made, by him, to the competent authority and as such, he was greatly

prejudiced in his defence, in the enquiry and consequently the orders of penalty are violative of the principles of natural justice and liable to be set aside. In the written statement, the stand taken up by the respondents was to the effect, that copy of the preliminary report, was not supplied to the petitioner. It is evident, from the list of documents mentioned at page 26 of the paper book, that Memo No. DDF(Spl)-86/31391 dated 16.4.1986 of the Deputy Director (Field) Food and Supplies Department, Jalandhar, was relied upon as a document, to prove the charges against the petitioner. This document, was nothing else than the preliminary report submitted by the Deputy Director(Field) , Food and Supplies Department, Jalandhar. In reply (Annexure P-2) dated 23.5.1987, which was filed by the petitioner, to the charge-sheet, it was, in clear cut terms, stated by him, that he had not been supplied copy of the preliminary Enquiry report, and, in case, the enquiry was to be got conducted, in the first instance, copy of the preliminary enquiry report, may be given to him. However, despite his request, he was not supplied copy of the preliminary enquiry report. Even, in the appeal filed by the petitioner, before the Appellate Authority (Annexure P-6), he in clear-cut terms stated that copy of the preliminary enquiry report submitted by Ajit Singh Deputy Director, (Field) ,Food and Supplies Department, Jalandhar, was not supplied to him. In para 5 of the writ petition, the petitioner stated that the preliminary enquiry report was also relied upon by the Enquiry Officer. This fact was not denied by the respondents, in the written statement. Rule 8 (3) (4) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 requires that a list of witnesses and a list of the documents are to be supplied to the delinquent by the competent authority. Even Rule 8 (11) (iii) requires the Inquiring Authority to supply the copies

of statements and documents to the delinquent official, on his request, in this behalf orally or in writing. The delinquent official should not be taken by surprise, and he should know, as to who are the witnesses, appearing against him, and which documents shall be produced, to prove the charge. The copies of the statements of the witnesses, if any, examined, in the preliminary enquiry, were also not supplied to the delinquent. Even if, it is assumed, that there was no previous statement of the witness recorded during the course of preliminary enquiry, the preliminary enquiry report itself should have been treated to be the previous statement of Ajit Singh Deputy Director (Field) Food and Supplies Department, Jalandhar. Had the copy of the preliminary enquiry report been supplied to the petitioner, he would have certainly cross-examined Ajit Singh, Deputy Director, effectively during the course of regular enquiry. On account of non-supply of a copy of the preliminary enquiry report, the petitioner was taken by surprise, and was greatly prejudiced, in his defence. The enquiry was, thus, held in violation of the principles of natural justice. The principle of law, laid down in **Hans Raj's case (supra)** that if, copy of the preliminary enquiry report, which was relied upon, in the charge-sheet and also by the Inquiring Authority, in the regular departmental enquiry, was not supplied to the petitioner, the enquiry stands vitiated, is fully applicable to the facts of the present case. The orders impugned, can, therefore, be said to be illegal, being violative of the principles of natural justice, on this ground. The contention of the learned Counsel for the petitioner carries substance, and the same is accepted.

11. Learned Counsel for the respondents, however, submitted that, on the basis of application, moved by the petitioner, he was

allowed to inspect the documents. He further submitted that the petitioner also inspected the preliminary enquiry report, and, as such, it could not be said that he was prejudiced in his defence, during the course of regular enquiry, on account of non -supply of a copy of the preliminary enquiry report. The contention of the learnrd Counsel for the respondents, does not appear to be correct. No doubt, such a stand was taken up by respondents, in the written statement, yet no document was produced, on record, to establish that an application was moved by the petitioner, and he was allowed to inspect the documents, as a result whereof, he inspected the same, including the preliminary enquiry report. The assertion made by the respondents, in this behalf, in the written statement, therefore, is not based on any material, on record. The contention of the learned Counsel for the respondents, being without merit, must fail and the same stands rejected.

12. It was next contended by the Counsel for the petitioner that even a copy of the enquiry report, submitted by the Inquiring Authority, after holding the regular departmental enquiry, was not supplied to the petitioner, before imposing penalty, upon him, by the disciplinary authority, as a result whereof, he was condemned unheard and, as such, the impugned orders were illegal. It was admitted by the respondents, in the written statement, that a copy of the enquiry report, after the conclusion of regular enquiry, was not supplied to the petitioner, before imposing penalty, by the disciplinary authority, upon him. However, according to them, copy of such enquiry report, was supplied to him, at the time of filing the statutory appeal against the order of penalty, imposed by the disciplinary authority and the period of filing of appeal was extended. Supply of copy of the enquiry report, is not an empty formality. Only after the supply of a

copy of the report, in the regular enquiry, to the petitioner, he could file his representation, showing that the findings of the Enquiry officer, were incorrect, or were not based on any evidence. He could also show that the enquiry report should not be accepted, on various grounds, which he might have urged, in that regard. On account of non-supply of a copy of the enquiry report, submitted after holding the regular enquiry, to the petitioner, he was prejudiced, in his defence. The impugned orders were, thus, passed, in violation of the principles of natural justice, and, as such are illegal. The contention of the Counsel for the petitioner, in this regard, being correct is accepted.

13. The learned Counsel for the respondents, however, submitted that though a copy of the enquiry report, submitted by the Enquiry officer, after holding the regular departmental enquiry, was not supplied to the petitioner, before passing the impugned order of penalty, by the disciplinary authority, yet it was supplied to the petitioner, at the time of filing the appeal and the period of filing the same was extended. Even if, copy of the enquiry report submitted by the Enquiry Officer, after holding the regular departmental enquiry, was supplied to the petitioner, at the time of filing the statutory appeal, that did not make any difference. The stage for supply of such a copy was before the disciplinary authority, had passed the order of penalty and not after that. In this view of the matter, the submission of the learned Counsel for the respondents, being without merit, stands rejected.

14. It was next contended by the learned Counsel for the petitioner, that the Enquiry officer, exonerated the petitioner, in respect of charges 1 and 4, levelled against him, in the charge sheet, though, the

Disciplinary Authority disagreed with the Appellate authority, and held that all the charges levelled in the charge sheet, against the petitioner, stood proved. He further contended that a copy of the disagreement note, was not supplied to the petitioner, so as to enable him, to file an effective representation, against the same, before the disciplinary authority, to show that the charges No. 1 to 4 of which, he was exonerated by the Enquiry Officer, did not stand proved, on the basis of the evidence, led during the course of enquiry. He further contended that in the event of non-supply of a copy of the disagreement note, recorded by the Disciplinary Authority, the petitioner was condemned unheard, and as such, the impugned orders were illegal. The contention of the learned Counsel for the petitioner in this regard, appears to be correct. It was required of the disciplinary authority, to supply a copy of the disagreement note to the delinquent in respect of the charges of which he was exonerated by the Inquiring Authority before imposing penalty upon him. Had a copy of the disagreement note been supplied to the delinquent , he would have shown the disciplinary Authority that the charges of which he was exonerated by the Inquiring Authority, were not proved, on the basis of the evidence produced. Since, admittedly a copy of disagreement note, was not supplied by the disciplinary authority, to the petitioner, before passing the impugned order dated 19.12.1990, imposing penalty, upon him, he was condemned unheard. On account of this reason also, the orders impugned are illegal, being violative of the principles of natural justice. The contention of the Counsel for the petitioner, in this regard, is accepted.

15. In view of the reasons recorded hereinbefore, the writ petition is accepted, with no orders as to costs, and the orders dated

19.12.1990 (Annexure P-5) passed by respondent No.2, and dated 12.2.1992 (Annexure P-8) passed by respondent No.1, are quashed. The respondents are directed to compute the consequential benefits, flowing on account of the quashing of the orders, referred to above, and release the same, as admissible under the relevant Rules, to the petitioner, within a period of four months, from the date of receipt of a certified copy of the judgment. However, the petitioner shall not be entitled to any interest on the financial benefits, if found due, on account of quashing of the aforesaid orders.

November 21, 2007 **(SHAM SUNDER)**
archana **JUDGE**